IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO. 3668 OF 1995

Harishchandra Sarjerao Gajbhiye
Former Civil Judge, Junior Division and Judicial Magistrate, First Class,
presently residint at C 2/25/0.1/Sector 16, Opp. Modern College, Vashi,
New Bombay - 400 703. .. Petitioner

Vs.

1. The State of Maharashtra
(Through : The Principal Secretary to Government, Law & Judiciary Department, Mantralaya, Mumbai 400 032.
(Copies of the petition are served through the Additional Government Pleader, High Court (A.S.), Bombay)

2. The High Court of Judicature at Bombay
(Through: The Registrar, Appellate Side, High Court, Bombay.) .. Respondents

Mr. S.D. Dharmadhikari and Mrs. Phalguni Banerjee for petitioner.
Mrs. S.S. Bhende, AGP for State.

CORAM : B. H. MARLAPALLE &
D. B. BHOSALE,JJ.

Date : May 02, 2006.

ORAL JUDGMENT (PER B.H. MARLAPALLE,J.):

1. The petitioner, who joined the judicial service in the State of Maharashtra on 13/7/1988 as Civil Judge, Junior Division and Judicial Magistrate, First Class, has challenged in this petition filed under Article 226 of the Constitution the order of

dismissal dated 25/5/1995 passed by and in the name of the Governor of Maharashtra.

2. The petitioner was issued a charge-sheet on 16/12/1992 and he submitted his explanation thereto on 20/1/1993 while he was occupying the post of Civil Judge, Junior Division and Judicial Magistrate, First Class at Patoda, District Beed and he denied the charges. The charges pertained to the period while the petitioner was posted as Civil Judge, Junior Division and Judicial Magistrate, First Class at Ulhasnagar, District Thane. A departmental inquiry was instituted and the petitioner submitted an additional written statement vide his letter dated 5/5/1993. List of witnesses was submitted by him along with the documents required. The petitioner appeared before the Inquiry Officer i.e. Shri S.C. Malte, the then District and Sessions Judge at Pune. The Inquiry Officer submitted his report in March, 1994 and held that out of the five charges, against the petitioner, charge nos.3 and 4 were not proved, whereas charge nos.1,2 and 5 were proved. The said charges proved against the petitioner as per the Inquiry Officer are as under:-

> (1) While working as Judicial Magistrate, First Class, Ulhasnagar, District Thane, on 29th November, 1991, he acquitted all the eight accused persons in Criminal Case

No.260/89 - Nirmal Singh, Food Inspector, Ulhasnagar Municipal Council V/s. Ramesh Makhija and seven others - on the ground that prosecution was not interested in pursuing the matter, the complainant and the advocate of complainant were absent, though repeatedly called, under following circumstances, namely:-

(a) On 15th November, 1991, the case was adjourned to 6/12/1991, in the present of Advocate Shri Kadam, representing the complainant. However, it was taken on board on 22nd November, 1991 postponed to 29th November, 1991 and disposed of on 29th November, 1991.

(b) On 15th November, 1991, although accused No.4 and 6 furnished bail, the accused No.5 had not furnished even P.R. bond till then and thus the case was in fact not even ready for hearing.

(c) the order of acquittal passed therein was not founded on the provisions of chapter XIX of the Criminal Procedure Code, relating to trial of warrant cases, instituted otherwise, than on Police reports, Section 245 Criminal Procedure Code, 1973, was not applicable at that stage. Such an order was also not possible either under section 248 or under section 249 Criminal Procedure Code, 1973 because the alleged offences were punishable under sub-section (1) of section 16 of the Prevention of Food Adulteration Act, 1854, which empowers the Court to pass sentence upto three years and thus the case was governed by the procedure for a warrant triable cases.

(d) the view taken by him while disposing off this case on 29th November, 1991 is totally inconsistent with the view earlier taken by him in Criminal Case No.3790/82, Food Inspector Vs. Jaikishan in para 15 of the judgment delivered on 21st September, 1991 while rejecting the

prayer for leniency.

(e) in the Roznama dated 22nd November, 1991, words "accused are absent" seem to have been changed to accused are present" by overwriting.

(f) in the final order below Exh.1, the word "discharged" seems to be scored out and substituted by the words "acquitted", although, since charges was not framed, the accused could not have been acquitted.

(2) that on 19th December, 1991, you accepted plea of guilty of two accused, Girdharilal and Gul Girdharilal, in Criminal Case No.782/82. K.V. Pillai Vs. Girdharilal and another - a case under the Prevention of Food Adulteration Act, 1854 and on conviction passed absolutely lenient sentence to suffer imprisonment only till the rising of the Court and to pay a fine of rupees 500/- in default S.I. for one month, under the following circumstances, namely:-

(a) Girdharilal and Gul Girdharilal appear to be the wholesellers in cotton seed oil, whereas the accused in Criminal Case No.3790/82, to whom leniency in sentence was denied was a petty Panwala and both the cases were nine years old (Criminal Case No.3790/82 and 782/82);

(b) while convicting accused Jaikishan in Criminal Case No.3790/82 on 21st September, 1991, he rejected his prayer for leniency and observed in para 15 of the Judgment that offences under the Prevention of Food Adulteration Act, 1854 were antisocial in nature;

(c) lenient view taken by him in favour of accused persons in Criminal Case No.782/82 K.V. Pillai Vs. Girdharilal and another - on 19th December, 1991, is in contrast with the view taken by him in Criminal Case No.3790/82.

(5) between 3rd January 1992 and 3rd February 1992, he disposed of twenty six Criminal Cases (enlisted at Serial No.9 in the list of Document) under the Prevention of Food Adulteration Act, 1854 accepting plea of guilty of the accused persons and lenient sentences are passed under the following circumstances, namely:-

(a) all these cases suffered from the irregularities, namely, evidence before charge was not recorded and sentences lesser than minimum prescribed by law were passed;

(b) reasons for leniency recorded in these cases were stereotype such as, accused was described to be poor and respectable, he had a large family to support, he was a sole earning member, that it was his first offence, accused by pleading guilty had saved public time;

(c) at times, applications by the accused, praying to record his plea of guilty and leniency were incorporated in the judgment to add to the reasons for taking lenient view disregarding the fact that in the majority of these applications it was also pleaded that accused was innocent.

(d) Penal section of the relevant enactment was not mentioned either in the charges or in the judgment, which is indicative of the fact that decisions were pre-determine for example Criminal Case Nos.4120/84 and 231/89;

(e) as many as five accused persons have pleaded guilty and escaped with leniency in two cases on the same day;

(f) accused Kirshchand pleaded guilty in as many as three cases on the same very day but was still favoured with lenient sentences in all the cases;

(g) quite a good number of cases were taken on board on the requests of the accused persons. His above-mentioned

acts of omission and commission, do indicate culpability, namely, a desires to unduly favour the concerned accused persons for an improper motive and for consideration other than judicial and that he thereby failed to maintain integrity in the discharge of judicial functions.

3. A show cause notice dated 25/7/1994 was issued to the petitioner and a copy of the Inquiry Officer's findings was also forwarded to the petitioner. He submitted his reply to the show cause notice on 11/8/1994. While stating that the Inquiry Officer's report was not required to be accepted and that he should be exonerated, the petitioner pleaded that the findings of the Inquiry Officer should not be considered seriously and penalty of dismissal from service would not be justified on the following grounds:-

(a) He was a Junior Judge and every judicial officer was likely to commit mistake of some kind or the other in passing orders in the initial stage of his service which matured judicial officer would not do so. (Ishwarchand Jain vs. H.C. of Punjab and Harayana, A.I.R. 1988 S.C. 1395).

(b) That no allegations were made directly or indirectly that the cases were disposed off for illegal gratification.

(c) He had acted in a good faith believing that he had the power and jurisdiction to dispose off the cases while discharging his judicial function and not in any other capacity.

(d) That the judgments delivered by him were not challenged in the Appellate Court.

(e) That he was the elder person in his family and he had to look after other members of his family.

(f) That he was innocent and already punished mentally by going through the Departmental Inquiry and travelling from Patoda to Thane and also by transfer.

4. The defence statement, Inquiry Officer's report, reply to the show cause notice and the record placed were considered by the Hon'ble Chief Justice and the Hon'ble Judges of this Court and they agreed with the findings recorded by the Inquiry Officer and recommended that in view of the gravity of the charges held to be proved, a major penalty of dismissal from service as prescribed by Clause IX of sub-Rule (1) of Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979 was recommended to His Excellency the Governor of Maharashtra and accordingly the impugned order of dismissal dated 25/5/1995 came to be issued by the Governor. It appears that the petitioner submitted an appeal/representation against the impugned order of dismissal dated 25/5/1995 and then he approached this Court.

5. The In-charge Additional Registrar (Legal), High Court, Appellate Side, has filed the affidavit in reply and has clarified that copies of all the relevant documents were made available to the petitioner and for some documents he was offered an

opportunity of taking inspection and, in fact, he took inspection of documents and proceedings in the custody of the District Judge, Thane between 19th to 21st April 1993 and thereafter filed additional written submissions vide his letter dated 5/5/1993 wherein he did not complain of denial of supply of copies or in the alternative inspection of documents. Two Advocates were examined by the Inquiry Officer in addition to the other witnesses. The depositions of Shri Ahuja, learned Advocate and the President of the Bar of Ulhasnagar Court have not been found to be worth considerations but the depositions of Mr. Ashok Kadam, Advocate, who appeared for the complainant in Criminal Case No.260/89 have been dealt with by the Inquiry Officer.

6. We have independently considered the findings recorded by the Inquiry Officer in respect of the charges held to be proved i.e. charge nos.1,2 and 5. Criminal Case No.260/89 was on board on 15/11/1991 and was adjourned to 6/12/1991 and it was taken up on 22/11/1991 as well as 29/11/1991 when it ought not to have been so taken. The Inquiry Officer has recorded a finding that this case was directed to be listed on the board on 22/11/1991 and 29/11/1991 in normal circumstances could not be accepted and we find that the reasons given by the learned Inquiry Officer are

just and proper. Similarly, the observations made regarding the overwritings so as to change "absent" to "present" and "discharged" to "acquitted" are required to be accepted. The Inquiry Officer has considered the Roznama Exh. 31, Daily Board for 15/11/1991 and the memo book at Exh.36 dated 22/11/1991, Exh. 33 the board dated 29/11/1991 and the memo book Exh.37 pertaining to 29/11/1991. He has also agreed that the case was not ready to be taken up for discharge and the petitioner was not empowered to pass an order of discharge in the case for an offence punishable under the Prevention of Food Adulteration Act, more so when powers under Section 16-A of the said Act were not delegated to him. He also noted that the dismissal of the case in a summary trial manner had afforded an unjustified basis for acquittal of the accused on the ground that the complainant was absent. The Inquiry Officer has also noted that there were in all eight accused and four were ladies and taken into consideration the totality of the circumstances, it was obvious that the dismissal of the case was ostensibly smacked with suspicion and the exercise of powers was not a mere coincidence or a bona fide mistake.

7. The Hon’ble Chief Justice and the Hon’ble Judges of this Court had considered the report of the

Inquiry Officer as well as the reply filed by the petitioner to the show cause notice and more so his request for a lenient and sympathetic view and their Lordships found that the petitioner did not deserve any sympathetic consideration and that in the circumstances of the charges proved against the petitioner, he was unfit to continue as a member of the Lower Judiciary in the State of Maharashtra. We do not find any reason to take a different view.

8. The petitioner has pleaded before us that judicial orders could have been challenged before the appropriate appellate forum and when such a judicial remedy was available to the complainant, disciplinary action initiated in such circumstances would be illegal and he could not have been charged of serious misconduct. He also contends that unless there were strong and cogent reasons to impeach his integrity, there was no case to award capital punishment of dismissal from service. He has also questioned the legality of the departmental inquiry and the findings of the Inquiry Officer.

. We agree that the judicial orders passed by a Judicial Officer per se cannot be a basis of initiating disciplinary proceedings against him and the parties aggrieved have the remedy to challenge

these orders by filing appeals/revisions or writ petitions. However, in the instant case it is not the judicial decision that is the basis of the inquiry proceedings but, in fact, the circumstances under which these two orders have been passed, overwriting in the official record, procedural flaws which display even lack of integrity and misusing judicial powers which were not vested with the petitioner. By the time the orders, on the basis of which charge-sheet was framed, were passed, the petitioner had already put in three years judicial service and was confirmed. He was not a beginner and the mistakes were not bona fide and the Inquiry officer was right in his findings that the errors of procedure were motivated. We do not find any reason to discard these findings. We are satisfied on the independent assessment of the Inquiry Officer's findings and the reply to the show cause notice submitted by the petitioner, that no interference is called for in the impugned order of dismissal from judicial service.

8. Hence, this petition fails and the same is hereby dismissed. Rule discharged. No costs.

(D.B. Bhosale,J.) **(B.H. Marlapalle, J.)**